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3                   **UNITED STATES DISTRICT COURT FOR THE**  
4                   **DISTRICT OF PUERTO RICO**  
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7                   FERNANDO TORRES-NEGRÓN,  
8                   Plaintiff,

9                   v.

10                  ANTONIO L. RIVERA, et al.,  
11                  Defendants

Civil No. 02-1728 (HL)  
Civil No. 02-1729 (HL)

12                   **OPINION AND ORDER**  
13

14                  Plaintiff Fernando Torres (hereinafter “Torres”) brings this action against various co-  
15 defendants<sup>1</sup> for copyright infringement under the Copyright Act of 1976, as amended, 17  
16 U.S.C. § 101 *et seq.* Plaintiff also seeks relief under Puerto Rico law for infringement of his  
17 moral rights and for co-defendant’s unjust enrichment. Torres’ claims arise out of co-  
18 defendants alleged unauthorized use of the lyrics to three songs plaintiff wrote, namely:  
19 “Triste Final,” “Noche de Fiesta,” and “Bebo por Ti”. In the amended complaint it is alleged  
20 that the defendants “unlawfully and willfully, performed, reproduced, recorded, copied,  
21 published and distributed” the lyrics written by Torres, without his authorization, without

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23                  <sup>1</sup> The defendants in this case are: Antonio L. Rivera-López, Angélica Rivera, and the  
24 conjugal partnership constituted by them; Centro Records; Gozadera; Solo Exitos, Inc.; Yesenia  
25 Rivera-Matos; Sorymar Rivera-Matos; Luis Rivera Record Distributor, Inc. d/b/a Luis Rivera  
26 Distributors; CDT Records, Inc. d/b/a Casa de Los Tapes, Inc.; Cruz Manuel Hernández-  
27 Santiago, aka Manny Manuel; Musical Productions, Inc.; J&N Records; Sony Discos, Inc. d/b/a/  
28 Sony Music Distribution; Los Sabrosos del Merengue; Sabrosos Publishing, Inc.; Nota  
Publishing Inc.; Antonio Moreno; EMI Latin; Luis Rivera-Mejia; Aponte Distributors d/b/a  
Distribuidora Aponte; HMS Records; SPR, Inc.; Privilege Corp.; Richie Viera; and Henry  
Rosario.

1 receiving a license, and without paying him royalties.<sup>2</sup> (See Docket No. 81).

2 Pending before the Court is Magistrate Judge Justo Arenas's Report and  
3 Recommendation (Docket No. 274), granting in part and denying in part the various motions  
4 for summary judgment filed by the defendants.<sup>3</sup> In addition, the Magistrate Judge granted in  
5 part co-defendants Sony Discos and J&N's joint motion for judgment on the pleadings.  
6 (Docket No. 110). The motion filed by plaintiff Torres to exclude the testimony of J&N's  
7 designated witness (Docket No. 122) was also denied by the Magistrate Judge in his Report  
8 and Recommendation.

9 Defendants and Plaintiff filed timely objections to the Report and Recommendation  
10 (Docket Nos. 289, 293, 297, 298, 301). After a careful review of the record, the Court agrees  
11 with most of the conclusions in the Magistrate Judge's Report and Recommendation, and thus  
12 adopts **in part** the Magistrate Judge's Report and Recommendation.

13

14 **STANDARD OF REVIEW**

15 A district court, may, on its own motion, refer a pending matter to a United States  
16 Magistrate Judge for a Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.  
17 72(b); Local Rule 72. The losing party may contest the Report and Recommendation by filing  
18 written objections within ten days of being served with a copy of the Report and

19

20 <sup>2</sup> The songs subject to this action are contained in several recordings which were  
21 produced and distributed by the defendants. The albums are called: Merenhits 94', Bailando y  
Gozando con . . .Gozadera, and Manuel y el Trio Boríñquen.

22

23 <sup>3</sup> Defendants EMI Latin, CDT Records, Sony Discos and J&N filed motions for summary  
24 judgment in accordance with this Court's scheduling orders. EMI Latin filed a motion for  
25 summary judgment (Docket No. 182), which plaintiff opposed (Docket No. 215). The  
26 reply and surreply are filed as Docket Nos. 245 and 252. Defendant CDT Records filed a  
27 motion for summary judgment (Docket No. 199), which plaintiff opposed (Docket No.  
28 216). The reply and surreply are filed as Docket Nos. 255 and 259. Co-defendants Sony  
Discos and J&N filed a joint motion for summary judgment (Docket No. 202), which  
plaintiff opposed (Docket No. 231). The reply and surreply are filed as Docket Nos. 253  
and 264. The aforementioned motions were all referred to Magistrate Judge Arenas and  
discussed in his Report and Recommendation of November 22, 2004. (Docket No. 274).

1 Recommendation. The Court must then make a *de novo* determination of those portions of  
2 the Report and Recommendation to which an objection is made. The Court may accept, reject  
3 or modify, in whole or in part, the Magistrate Judge's recommendations. "Failure to raise  
4 objections to the Report and Recommendation waives that party's right to review in the  
5 district court and those claims not preserved by such objection are [waived]." Davet v.  
6 Maccarone, 973 F.2d 22, 30-31 (1st Cir. 1992).

7

8 **FACTUAL BACKGROUND**

9 In the amended complaint Torres alleges that he is an artist, author and composer. He  
10 is the author of the lyrics to three musical compositions: "Triste Final," "Noche de Fiesta,"  
11 and "Bebo por Ti." Torres is a member of the American Society of Composers, Authors &  
12 Publishers (hereinafter "ASCAP"). "Noche de Fiesta" and "Bebo por Ti" have been  
13 registered with the ASCAP since February 4, 1994. "Trite Final," has been registered with  
14 the ASCAP since May 17, 1994. Torres claims to be the sole proprietor of all rights, titles,  
15 interests and copyrights of the aforementioned musical compositions.

16 On January 31, 2002, the United States Copyright Office issued Torres a Certificate  
17 of Registration No. PAU 2-624-261 for the musical compositions "Triste Final," "Noche de  
18 Fiesta" and "Bebo por Ti." On February 14, 2002, Torres filed his application for registration  
19 of these songs at the Puerto Rico Intellectual Property Registry.

20

21 **ANALYSIS**

22 **A. Torres's Motion to Exclude the testimony of J&N's expert:**

23 In his Report and Recommendation, the Magistrate Judge denied plaintiff's motion to  
24 exclude J&N's designated expert witness, Marti Cuevas. (Docket No. 122). The Federal  
25 Magistrates "Act confer[s] explicit authority upon district courts to designate magistrate  
26 judges to hear pretrial motions," such as the motion to exclude an expert witness filed by  
27 Torres. See Phinney v. Wentworth Douglas Hospital, 199 F.3d 1, (1<sup>st</sup> Cir. 1999); 28 U.S.C.  
28 § 636(b)(1)(A). Given that the motion to exclude an expert is within the ambit of section

1 636(b)(1)(A) and is not is not excepted by said section, the district court can revise it only if  
2 "it has been shown that the magistrate's order is clearly erroneous or contrary to law." Id.

3 Rule 702 of the Federal Rules of Evidence gives district courts broad discretion in  
4 determining the qualifications of expert witnesses. The Court needs to determine whether,  
5 "given the proffered expert's background, . . . [and] the scientific, technical, [and/]or other  
6 specialized knowledge he[/she] offers 'will assist the trier better to understand a fact in  
7 issue.'" Gaydar v. Sociedad Insitituto Gineco-Quirurgico y Planificacion Familiar, 345 F.3d  
8 15, 24 (1<sup>st</sup> Cir. 2003)(citing United States v. Alzanki, 54 F.3d 994, 1005 (1<sup>st</sup> Cir. 1995)). The  
9 Magistrate Judge carefully reviewed the qualifications of Marti Cuevas, in particular her  
10 experience in the music industry, and concluded not only that she had the qualifications to  
11 testify as an expert, but most importantly, that her testimony would assist the trier of fact in  
12 determining the issue of damages for copyright infringement. The Magistrate Judge further  
13 concluded, and the Court agrees, that the fact that Cuevas might be also called to testify as a  
14 fact witness does not necessarily disqualify her proffered testimony as an expert witness. See  
15 e.g., United States v. Rivera-Rosario, 300 F.3d 1, 17-18 (1<sup>st</sup> Cir. 2002)(discussing that the  
16 district court did not err by qualifying a witness as an expert, even when he also testified as  
17 a fact witness); see also, United States of America v. Ayala-Pizarro, 2005 WL 1119755 (1<sup>st</sup>  
18 Cir. May 12, 2005)(stating that the same witness may be qualified to testify both as a lay  
19 witness and as an expert witness).

20 In view of the aforementioned, the Court hereby affirms the Magistrate Judge's  
21 conclusion to deny Torres's motion to exclude J&N's proposed expert witness (Docket No.  
22 122), because it can not be said that his ruling is clearly erroneous or contrary to law.  
23

24 **B. Sony Discos and J&N's Joint Motion for Judgment on the Pleadings:**

25 *1. Preemption of Unjust Enrichment claim under Puerto Rico law*

26 In his Report and Recommendation the Magistrate Judge found that Torres' claim for  
27 unjust enrichment under Puerto Rico law is preempted by 17 U.S.C. § 301(a). Specifically,  
28 the Magistrate Judge concluded that plaintiff Torres failed to distinguish the underlying

1 factual predicate of the copyright infringement claim from that of the Puerto Rico law claim  
2 for unjust enrichment. Plaintiff Torres did not file objections as to this particular issue. In  
3 fact, a careful review of the record, and of the applicable law dealing with preemption in the  
4 area of copyright infringement, supports the Magistrate Judge's conclusion that Torres's state  
5 law claim of unjust enrichment is preempted by the Copyright Act. See e.g., Alvarez Guedes  
6 v. Marcano Martinez, 131 F.Supp.2d 272, 279-80 (D.P.R. 2001)(finding that an unjust  
7 enrichment claim under Puerto Rico law is preempted by the Copyright Act where the state  
8 law cause of action is equivalent in substance to a copyright infringement claim). See also,  
9 John G. Danielson, Inc. V. Winchester-Conant Properties, Inc., 322 F.3d 26, 45 (1<sup>st</sup> Cir.  
10 2003)(holding that a state law claim for unfair competition was preempted by the Copyright  
11 Act where both claims were based on the same behavior); Video Pipeline, Inc. v. Buena Vista  
12 Home Entertainment, Inc., 210 F.Supp.2d 552, 567-68 (D.N.J. 2002)(stating that unjust  
13 enrichment claims relating to the use of copyrighted materials are generally preempted).

14 The Court agrees with the Magistrate Judge's conclusion that plaintiff Torres' claim  
15 for unjust enrichment under Puerto Rico law is preempted by the Copyright Act, and therefore  
16 adopts and approves the Magistrate Judge's Report and Recommendation on this particular  
17 issue. Sony Discos and J&N's motion for judgment on the pleadings will be granted in part,  
18 and Torres' **state law claim for unjust enrichment will be dismissed**.

19 Co-defendants CDT and EMI Latin in their motions for summary judgment also assert  
20 preemption on Torres' unjust enrichment claim. Consequently, Torres' claims for unjust  
21 enrichment are hereby dismissed as preempted by the Federal Copyright Act.

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23 *2. Statutory Damages and Attorney's Fees*

24 Magistrate Judge Arenas conclude that Torres was precluded from recovering an award  
25 of statutory damages and attorney's fees under 17 U.S.C. § 412. Section 412(1) of the  
26 Copyright Act limits the scope of damages awards for copyright infringement violations "by  
27 providing that 'no award of statutory damages or of attorney's fees . . . , shall be made . . . [if]  
28 infringement of copyright in an unpublished work commenced before the effective date of its

1 registration.”” Johnson v. Jones, 149 F.3d 494, 504-05 (6<sup>th</sup> Cir. 1998)(citing 17 U.S.C. §  
2 412(1)); Gamma Audio & Video, Inc. v. Ean-Cheas, 11 F.3d 1106, 1111 n. 3 (1<sup>st</sup> Cir. 1993).  
3 See also, Cornerstone Home Builders, Inc. v. McAllister, III, 311 F.Supp.2d 1351 (M.D.  
4 Florida 2004)( finding that the commencement of infringement prior to registration of  
5 copyright precluded an award of fees or statutory damages); Melville B. Nimmer and Davis  
6 Nimmer, 2 *Nimmer on Copyright*, § 7.16[C](1).

7 Therefore, it follows that in order for a copyright owner, such as Torres, to be entitled  
8 to recover statutory damages and/or attorney’s fees, the lyrics to the songs in question must  
9 have been registered prior to the commencement of the infringement for which such remedies  
10 are sought. It is undisputed that Torres registered the lyrics of the songs “Triste Final,”  
11 “Noche de Fiesta,” and “Bebo por Ti” on January 31, 2002. The record further shows that  
12 the alleged infringements commenced way before the registration date of January 31, 2002.<sup>4</sup>

13 Torres argues that he should be able to recover statutory damages and attorneys fees  
14 for each infringement action occurring after the January 31, 2002 registration date.<sup>5</sup> The  
15 Court disagrees. As the Magistrate Judge correctly stated in his Report and Recommendation,  
16 courts that have considered this question have stated that for purposes of section 412 and  
17 infringement “‘commences’ . . . when the first act in a series of acts constituting continuing  
18 infringement occurs.” Johnson v. Jones, 149 F.3d at 506 (citations omitted). See e.g., Mason  
19 v. Montgomery Data, Inc., 976 F.2d 135, 143 (5<sup>th</sup> Cir. 1992); Cordon Holding C.B. v.  
20 Northwest Publishing Corporation, 2005 WL 589405 \*8 (S.D.N.Y. March 11, 2005);  
21 Fournier v. Erickson, 202 F.Supp.2d 290 (S.D.N.Y. 2002); Ushodaya Enterprises, Ltd. v.  
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23         <sup>4</sup> For example, the record shows that J&N manufactured and distributed a  
24 recording entitled Merenhits 94 containing a composition entitled “Noche de Fiesta”  
25 allegedly written by Torres through EMI-Latin between March 1994 and April 1997, and  
thereafter in a re-release through Sony Discos between May 1999 and February 2001.  
(See Docket 200, Exhibits B, C, E; Declaration of Marti Cuevas).

26         <sup>5</sup> Torres has set forth some proof that the recording of Merenhits 94 was still  
available to the public at least until February of 2004 through the internet. ( See Docket  
27 No. 232, Exhibit I).

1       V.R.S. International, Inc., 64 F.Supp.2d 352, 353 (S.D.N.Y. 1999); Innovative Networks, Inc.  
2       v. Young, 978 F.Supp. 167, 175 (S.D.N.Y. 1997).

3           In view of the aforementioned, the Court agrees with the Magistrate Judge's conclusion  
4 that section 412 precludes Torres from recovering statutory damages and attorneys fees, since  
5 the alleged infringements occurred prior to the date in which the lyrics to the songs were  
6 registered. Thus the Court hereby adopts and approves the Magistrate Judge's Report and  
7 Recommendation on this particular issue.

8           Given that co-defendant CDT also addressed the issue of statutory damages and  
9 attorneys fees in its motion for summary judgment, the same is granted on this issue.  
10

11       3. *Moral Rights violations under Foreign Law*

12           In his amended complaint Torres includes a generalized allegation for a violation of  
13 his moral rights as an author under the laws of all the countries in which the albums subject  
14 to this dispute were distributed. In his Report and Recommendation, Magistrate Judge Arenas  
15 concluded that Torres's claim for violation of his moral rights pursuant to the laws of other  
16 countries should be dismissed, given that the record shows that the albums subject to this  
17 dispute were distributed in the United States and Puerto Rico.

18           The Court agrees. In his objections to the Magistrate Judge's Report and  
19 Recommendation, Torres re-hashes the same arguments made in the opposition to Sony  
20 Discos and J&N's motion for judgment on the pleadings pertaining to this particular issue.  
21 Even at this advanced stage of the litigation, there is nothing on the record that suggests that  
22 these recordings were distributed outside the United States and Puerto Rico. Further, Torres  
23 has not made any reference to any particular foreign law and/or treatise. Therefore, all of  
24 Torres' claims based on alleged violations of his moral rights based on the laws of other  
25 countries are hereby dismissed.  
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1     C. Motions for Summary Judgment

2     1. Copyright Registration- Sony and J&N

3         In their motion for summary judgment Sony Discos and J&N argue that Torres's  
4         copyrights infringement claim must be dismissed as a matter of law because he lacks a valid  
5         copyright registration for the compositions at issue. Specifically, defendants allege that  
6         Torres has failed to comply with one of the requirements of copyright registration, namely the  
7         requirement to include a copy of the work. See 17 U.S.C. § 408(b).

8         The Copyright Act requires that a copy or copies of the work sought to be registered  
9         be deposited as part of the application process. Id. The cases that have interpreted section  
10        408(b) of the Copyright Act have found that copies, as defined in the statute, do not include  
11        subsequent "reconstructions" of the work. See, e.g., Coles v. Wonder, 283 F.3d 798, 801-02  
12        (6<sup>th</sup> Cir. 2002)(exact copy of earlier work that was reconstituted from memory was insufficient  
13        to satisfy the requirement that a copy directly refer to the original); Kodadek v. MTV  
14        Networks, Inc., 152 F.3d 1209, 1211-12 (9<sup>th</sup> Cir 1998)(artist's reconstruction of cartoon  
15        characters from memory did not satisfy copyright registration requirement); Seiler v.  
16        Lucasfilm, Ltd., 808 F.2d 1316 (9<sup>th</sup> Cir. 1987)(stating that for purposes of certainty in  
17        obtaining copyright registration, reproductions from memory are simply insufficient).  
18         Nonetheless, copies may be produced by directly referring to the original. Shady Records, Inc.  
19        v. Source Enterprises, Inc., 2005 WL 14920 \* 14 (S.D.N.Y. 2005)(discussing the relevant  
20        case law and concluding that even though reconstruction from memory is not permitted,  
21        reconstruction when directly referring the original satisfies the statutory requirement).

22         Defendants maintain that Torres admitted in his deposition that the copies he deposited  
23         with his copyright registration form were reconstructed from memory. (See Docket No. 200,  
24         Exhibit G, pgs. 37, 47, 55, 57-58; Exhibit H, pgs. 36, 44, 47-48, 59, 60-61, 97; Exhibit I, pgs.  
25         115-118). Plaintiff, on the other hand, argues that at the time he wrote the lyrics in 1994, he  
26         transcribed the words of the songs in question into handwritten form, and that later he  
27         transcribed the words into a computer by referring to the handwritten paper. (Docket No. 232,  
28         Plaintiff's statement under penalty of perjury, ¶32.)

1       Unlike the Magistrate Judge, the Court finds that at the very least there is a factual  
2 controversy regarding the validity of Torres' copyright registration, i.e., whether the copies  
3 submitted with Torres' registration application qualify as bona fide copies of the original  
4 work. In addition, and in accordance with the Magistrate Judge's conclusion, the Court finds  
5 that at this stage, the purpose of the Copyright Act would be frustrated by summarily denying  
6 protection to Torres for an alleged immaterial error in the deposit requirement of section  
7 408(b). See e.g., Data Gen. v. Grumman Sys. Support, 36 F.3d 1147, 1163 (1<sup>st</sup> Cir. 1994).  
8 In view of the aforementioned, and the fact that this issue appears to be one of first impression  
9 in our circuit, the Court will deny Sony Discos and J&N's motion for summary judgment  
10 based on Torres' alleged invalid registration.

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12       2. *Statute of Limitations*

13       All the defendants argue that Torres' copyright infringement claims are time-barred  
14 by the three-year statute of limitations. Specifically, defendants assert that Torres' copyright  
15 claims accrued more than three years before the present lawsuit was filed in May of 2002.  
16 It is not surprising that all the defendants raise this particular issue in their respective  
17 motions, given that Torres wrote the lyrics to the songs relative to this complaint sometime  
18 in 1993, and did not file this copyright infringement claim until May of 2002. (See Docket  
19 No. 182, EMI Latin's motion for summary judgment; Docket No. 199, CDT's motion for  
20 summary judgment; Docket No. 202, Sony Discos and J&N's motion for summary judgment).  
21 Nevertheless, Torres asserts that he acquired knowledge of the alleged copyright  
22 infringements shortly before filing his original complaint in May of 2002, and the amended  
23 complaint in July of 2003.<sup>6</sup>

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25       <sup>6</sup> The defendants make reference to different facts and dates in support of their argument  
26 that Torres' claims are time-barred by the three-year statute of limitations, given that each  
27 recording was distributed during different years. The Report and Recommendation discusses  
28 these particular factual differences and the Court sees no need to recount the same in this  
opinion. (See Report and Recommendation, Docket No. 274, pgs. 27-30, detailing the facts  
pertaining to defendant EMI Latin, pgs. 34-35; detailing facts pertaining to defendant CDT

1       The applicable statute of limitations is found in section 507(b) of the Copyright Act  
2 which states that civil actions for copyright infringement must be “commenced within three  
3 years after the claim accrued.” Napster, Inc. v. Hummer Winblad Ventures Partners, 2005 WL  
4 289977 (N.D. Cal 2005)(citing 17 U.S.C. § 507(b)). A cause of action for copyright  
5 infringement “accrues when a plaintiff, [such as Torres], knows of the infringement or is  
6 chargeable with such knowledge.” Bridgeport Music, Inc. v. Diamond Time, Ltd., 371 F.3d  
7 883, 889 (6<sup>th</sup> Cir 2004)(citing Roley v. New World Pictures, Ltd., 19 F.3d 479, 481 (9<sup>th</sup> Cir.  
8 1994)). In fact, “section 507(b) permits damages occurring outside of the three-year window,  
9 so long as the copyright owner did not discover –and reasonably could have discovered– the  
10 infringement before the commencement of the three-year limitation period.” Polar Bear  
11 Productions, Inc. v. Timex Corp., 384 F.3d 700, 706 (9<sup>th</sup> Cir. 2004).

12       The Magistrate Judge concluded that it was inappropriate to grant summary judgment  
13 as to the issue of whether Torres’ claims were barred by the statute of limitations. The Court  
14 agrees. The inquiry of whether or not a plaintiff should have known about the infringement  
15 prior to the three years, thus barring him from bringing the copyright action, is a fact sensitive  
16 question, which should be decided by the fact finder, and not via summary judgment. In view  
17 of the aforementioned, the Court hereby adopts and approves the Magistrate Judge’s Report  
18 and Recommendation as to this particular issue.<sup>7</sup>

19  
20 *3. Registration Requirements under Local Law - Moral Rights*

21       The Magistrate Judge concluded that Torres cannot recover damages for the alleged  
22 infringement of his moral rights under Puerto Rico law given that he did not register the lyrics  
23 to the songs subject to this complaint in the Intellectual Property Registry of Puerto Rico until

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25 Records, pg. 48; detailing facts pertaining to defendants Sony Discos and J&N).

26       <sup>7</sup> Given that the Court finds that the issue of whether or not Torres’ copyright claim is  
27 time-barred is better suited for the fact-finder, the Court, like the Magistrate Judge, will not  
28 address Torres’ alternative argument –namely, that there was tolling due to fraudulent  
concealment on the part of Sony Discos and J&N.

1 February 14, 2002. The Court disagrees.

2 Puerto Rico's Intellectual Property Act provides in relevant part that: "In order to enjoy  
3 the benefits of this chapter, it is necessary to have registered the rights and works that support  
4 it in the Copyright Registry. . ." 31 P.R. Laws Ann. § 1402d (1998)<sup>8</sup>. The Puerto Rico  
5 Supreme Court has stated that in order to enjoy the benefits of Puerto Rico's Intellectual  
6 Property law, a person must register the right in the Intellectual Property Registry. Harguindy  
7 Ferrer v. UI, 148 D.P.R. 13, 30 (1999). However, the courts appear to make an exception to  
8 the aforementioned general rule in cases involving disputes relative to the authorship of a  
9 particular work. Id. at 31; see also Jiménez Hernández v. Vibración Musical, Inc., 2001 WL  
10 1758094 at \*4 (P. R. Ct. App. Nov. 14, 2001).

11 Unlike the Magistrate Judge, the Court finds that authorship is an issue in this  
12 particular case, and therefore Torres is exempt from the registration requirements contained  
13 in section 1402d of the local laws dealing with copyright infringement. There is evidence on  
14 the record that several of the albums in question credit other individuals as the authors and/or  
15 composer of Torres' songs. (See e.g., Docket No. 238, Exhibit E, J&N and Sony Discos' re-  
16 release of Merenehits 94' credits La Gozadera for the song "Noche de Fiesta;" Exhibit F, Que  
17 Siga El Party credits Antonio Rivera for the song "Triste Final"). The summary judgment  
18 record, however, is not entirely clear as to which albums erroneously misrepresented the author of  
19 the songs in question. In fact, there are several albums which do credit Torres as the songs'  
20 author/composer. (See Docket No. 238, Exhibit I, Bailando y Gozando con . . .Gozadera, referring  
21 to Torres as the author of the songs "Noche de Fiesta" and "Bebo por Ti"). In view of the  
22 aforementioned, the Court will allow Torres to bring forth moral rights violation claims only as  
23 to the records in which his songs were erroneously attributed to someone else.

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27       <sup>8</sup> The Spanish version of this statutory provision is contained in 31 L.P.R.A. § 1402d  
28 (2004).

#### *4. The Implied License and the Alleged Distribution Agreement with co-defendant Antonio Rivera*

These two issues merit little discussion. The Court agrees with the Magistrate Judge’s conclusion that defendant CDT Records failed to meet its burden of proving the existence of an implied non-exclusive license as an affirmative defense to Torres’ copyright infringement claim. Summary judgment is not appropriate given the conflicting evidence as to whether or not Torres received and cashed checks that CDT claims to have issued to him as royalties.

The Court agrees with the Magistrate Judge’s conclusion that the existence of an alleged distribution agreement between co-defendants CDT and Antonio Rivera, does not warrant the entry of summary judgment against Torres for the alleged copyright infringement claims against CDT. In fact, after the Magistrate Judge issued his Report and Recommendation, CDT filed a motion which is pending before this Court, for leave to file a cross party complaint against Antonio Rivera and Centro Records. (Docket No. 281).

## CONCLUSION

In view of the aforementioned, the Court hereby **ADOPTS IN PART** the Magistrate Judge's Report and Recommendation. (Docket No. 274).

Sony Discos and J&N's motion for judgment on the pleadings (Docket No. 110) is hereby **GRANTED in part and DENIED in part**. EMI Latin's motion for summary judgment (Docket No. 182) is **GRANTED in part and DENIED in part**. CDT Records' motion for summary judgment (Docket No. 199) is **GRANTED in part and DENIED in part**. Sony Discos and J&N's motion for summary judgment (Docket No. 202) is **GRANTED in part and DENIED in part**.

Torres' claims for unjust enrichment are hereby **DISMISSED** as they are preempted by the Federal Copyright Act. Torres' claims pursuant to the moral rights violation laws of other countries are also **DISMISSED**. The Court further finds that Torres is precluded from recovering statutory damages and/or attorney's fees under section 412 of the Copyright Act.

1 Unlike the Magistrate Judge, the Court concludes that Torres may bring his Puerto  
2 Rico moral rights violation claim, but only in those instances where Torres' authorship is an  
3 issue.

4 **IT IS SO ORDERED.**

5 In San Juan, Puerto Rico, this 18th day of May 2005.

6  
7 S/ HECTOR M. LAFFITTE  
U.S. District Judge  
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